

(2022) 08 CAT CK 0029

In the Central Administrative Tribunal

Case No : Original Application No. 260, 00051 Of 2019

Balaram Mohanty

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 23-08-2022

Acts Referred:

Constitution Of India, 1949 — Article 14, 16

Citation : (2022) 08 CAT CK 0029

Hon'ble Judges : Swarup Kumar Mishra, Member (J)

Bench : Single Bench

Advocate : J.M. Patnaik, S.K. Jee

Final Decision : Disposed Of

Judgement

Swarup Kumar Mishra, Member (J)

1. According to the applicant, after the missing of his father, while under treatment in the SCB Medical College and Hospital, Cuttack, after attaining the majority, he submitted application for providing appointment on compassionate ground for his sustenance. Since, no response was made, he approached this Tribunal in OA No. 836/1996, which was disposed of on 20.11.2001 with direction to the respondents to consider applicant's case on merits along with others as per Recruitment Rules. The application submitted by him did not yield any response, he once again approached this Tribunal in O.A. No. 514/2002, which was disposed of on 14.06.2005 with direction to the respondents to consider the representation of the applicant. In response thereto the respondents vide letter dated 16.11.2005 (A/1) rejected the prayer of the applicant on the ground that the "his father was not the regular employee of the railway, employment assistance on compassionate ground is not permissible" albeit the case of the applicant squarely covered by the Railway Board Letter No. E(NG)11181/RC/1251 dated 24.05.1982. Appeal preferred by him to the GM, ECo Railway Bhubaneswar also did not yield any result. Therefore, he approached this Tribunal once again in O.A. 133/2008. This Tribunal after considering the

case in its entirety and the provisions for providing appointment on compassionate ground in a case of the present nature, vide order dated 23.11.2009 (A/3), quashed the impugned orders dated 16.11.2005 and 23.10.2006 and directed Respondent No.2 to reconsider the case for providing appointment on compassionate ground. Respondents, although did not dispute the entitlement for providing appointment on compassionate ground to a situation to that of the applicant yet rejected his case vide speaking order dated 27.01.2014 (A/4), against which he preferred appeal and the appeal was rejected on the ground that the applicant is overaged vide letter dated 07.03.2014 (A/5). The applicant challenged the said order of rejection in O.A. No. 768/2014 wherein this Tribunal quashed the impugned order and directed to reconsider the case of the applicant vide order dated 28.07.2017. The respondents again rejected the case of the applicant vide letter dated 14.06.2018 (A/7) by reiterating the stand taken in the earlier order of rejection. Assailing and challenging the impugned order under Annexure-A/7 dated 14.06.2018, the applicant has filed the present O.A. inter alia praying to quash the same and direct the respondents to provide him appointment on compassionate ground within a period to be fixed by this Tribunal as respondents rejected the claim in each occasion without taking into consideration the specific order of this Tribunal in O.A. No. 133/2008 disposed of on 23.11.2009 and OA 768/2014 disposed of on 28.07.2017.

2. Respondents have filed their counter reiterating the reason of rejection taken in the impugned orders inasmuch as, in compliance of the order dated 23.11.2009 in OA 133/2008, the applicant was requested vide letter dated 15.04.2010 (R/4) to submit proper documents indicating that his father has been really missing and is still not traceable from the concerned police authority. The applicant submitted all the required documents. But no document was found that the father of the applicant was available with SSE/PWay/Cuttack and, therefore, taking into consideration the report so also the factual background the request of the applicant was rejected, which was accordingly intimated to the applicant vide letter dated 27.01.2014. Appeal preferred by the applicant having been rejected he approached this Tribunal in O.A. 768/2014. In compliance of the order of this Tribunal in O.A. No. 768/2014 dated 28.07.2017, the case of the applicant was reconsidered and rejected since the treatment of his father in SCB Medical College and Hospital was without any foundation and his father ceased to be in railway service. In sum and substance, it is the case of the respondents that taking into consideration the totality of the matter, his case was duly considered and rejected and reason of rejection was communicated to him in speaking order, which needs no interference and this O.A. is liable to be dismissed. The points taken in the Rejoinder filed by the applicant would be discussed infra.

3. Ld. Counsel for the applicant drawing attention of this Tribunal to the order dated 23.11.2009 in O.A. 133/2008 has submitted that the respondents are estopped to take any contrary view with a view to reject the claim of the applicant. The applicant after attaining majority has been regularly approaching

the authorities concerned in time but the respondents failed to consider his grievance in its proper perspective and kept rejecting the same on one ground or the other despite specific order of this Tribunal on each occasion. The delay in giving appointment is not attributable to the applicant and, therefore, overaged ought not to have stood on the way for getting appointment. Ld. Counsel for the applicant has submitted that the rejection is not only intentional and deliberate to flout the order of this Tribunal but also discriminatory/violative of Article 14 and 16 of the Constitution as in similar situated persons having overaged have been provided with appointment on compassionate ground vide order under Annexure-A/8 dated 22.08.2011. It has been submitted that when the respondents did not find any other ground after the order in OA 133/2008, they have come forward taking a new ground that the applicant is overaged and, therefore, he is not entitled to compassionate appointment. Accordingly, the Ld. Counsel for the applicant submitted that this is a fit case where the Tribunal may rise in the occasion and to direct the respondents to provide appointment to the applicant on compassionate ground.

On the other hand, Ld. Counsel for the respondents besides reiterating the stand taken in the order of rejection and counter has contended that appointment under compassionate ground is benevolent legislation and, therefore, cannot be claimed as a matter of right irrespective of the facts and situation. Since in consideration of the matter, the competent authority has taken a conscious view and rejected the case, this Tribunal being not the Appellate Authority over the decision of the competent authority should not interfere in the matter at this distance place and time when the applicant has become overaged. Accordingly, he has prayed for dismissal of this O.A.

4. As per the records, on attaining the majority, the applicant submitted application on 19.02.1996 seeking appointment on compassionate ground. Since no consideration was given he approached this Tribunal in O.A 836/1996. In compliance of the order of this Tribunal, the applicant submitted representation on 04.03.2002, 06.11.2002 and 10.10.2003. Since no consideration was given, he approached this Tribunal in OA 514/2002. Considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased, medically incapacitated and missing employee may be placed in a position of financial hardship while in service and the basis or policy is immediacy in rendering of financial assistance to the family, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy is the law of the land. However, in the instant case, the respondents did not attain the prayer of the applicant and, attended belatedly after the intervention of this Tribunal and intimated that the father of the applicant was not a regular employee in the railway, thus applicant is not entitled to appointment on compassionate ground, which order was challenged by the applicant in OA 133/2008 and in compliance of the order dated 23.11.2009, the applicant was intimated that as per the rules he was entitled to the appointment being overaged. The GM also rejected the appeal. Before proceeding further, it is

worthwhile to reproduce the relevant portion of the order in OA 133/2008 which reads as under:

"Admittedly, the applicant's father was a casual labour with temporary status. It is also not in dispute that while under treatment he was found missing on 15.1.1984 and to this effect FIR as per S.D.Entry No.196 dated 10.2.2007 was lodged. It is also admitted fact that as per Railway Board's instruction dated 24.5.1982 the case of dependants of missing Railway employees for compassionate appointment could be considered in case the whereabouts of former were not known for a period of seven years, although, according to the Railways, this instruction applies to the case of regular employees. Similarly, it is also not in dispute that as per the decision of the Railway Board in letter dated 31.12.1986 there is provision for compassionate appointment of the dependants/wards of casual labour with temporary status who die in harness. Keeping the above points in view, it is to be noted that the circumstances in which compassionate appointments could be made read as under:

"Appointments on compassionate grounds relate to those appointments which can be made of dependants of Railway servants who lose their lives in the course of duty or die in harness otherwise while in service or are medically incapacitated. The circumstances in which appointments on compassionate grounds may be made are as below:

(i) When Railway servants lose their lives in the course of duty or get so crippled that they cannot do any work (this also in the course of duty - for example, loco and traffic running staff in charge of trains involved in accidents)."

From the above recitals it is clear that if a Railway servant loses his life or dies in harness otherwise while in service and/or medically incapacitated, compassionate appointment in favour of dependant or ward could be considered, the object behind it being to redeem the distressed family. By this it is also self-evident that this provision is applicable to the case of regular railway employee or casual labour with temporary status, as the case may be. It is also amply clear from the above provision that in all three factors, viz., death, medical incapacitation and missing of railway employee, either regular or casual labour with temporary status are important aspects of the matter for considering the request for compassionate appointment. As a rule, death, medically incapacitated and missing, each by itself not only connotes and represents different and distinct meaning, but of own and independent meaning. However, the deduction to be derived therefrom is that all those ingredients, viz., death, medically incapacitated and missing are under the banner of compassionate appointment though 'missing of railway employee' is an exception in case of casual labour with temporary. In other words, whereas there is provision for compassionate appointment of the dependants/wards of regular employee, no such provision has been made in case of casual labour with temporary status in similar circumstance. Having regard to the above, it is now to be considered as to whether the Tribunal, in the absence of any such circumstances, can issue a

direction to the Respondent-Railways to consider the case of the applicant, whose father was a casual labour with temporary status. Be that as it may, the vital importance of the matter upon which the Respondents have attempted to establish their case is that as per rules, the father of the applicant having been granted 18 months EOL, his services were terminated. In this regard it is to be noted that the Respondents have not produced any corroborative material to show that the services of the father of the applicant had been so terminated. There is no material before this Tribunal to show that any such proceedings had ever been initiated against the father of the applicant, but at the same time the records would reveal that the Railways had allowed 18 months EOL up to 11.7.1983. It is to be noted in this context that the Respondents are silent as to what happened thereafter to the services of the applicant's father.

7. Having regard to the above, we quash the impugned orders at Annexures A/11 and A/15. This we are doing also considering the letter dated 6.7.1990 at Annexure A/2 of the Senior Divisional Personnel Officer.

Accordingly, we direct Respondent No.2 to reconsider the case of the applicant and take a final decision in the matter and communicate the same to the applicant within a reasonable time at any date within 90 days of the receipt of this order."

5. Admittedly, the above order has attained its finality having not challenged in any higher forum and as per the aforesaid order the case of the applicant ought to have been received favourable consideration because the case of the applicant is covered by the rules. But, the respondents rejected the claim of the applicant and now taking the stand that the applicant is overaged. Thus, the ground of overaged seems to a tactics to deny the applicant his legitimate expectation of appointment on compassionate ground on the plea which was not a ground taken by the respondents in OA No. 133/2008. The order of the Tribunal in OA 133/2008 is binding on the respondents. Thus, the ground of rejection taken by the respondents is not sustainable in the eyes of law especially on the face of the letter dated 22.08.2011 under Annexure-A/8 wherein similarly situated employees have been provided appointment on compassionate ground ignoring their age. In this regard, this Tribunal would like to place reliance of the observation of the Hon'ble Apex Court in the case of *Malaya Nanda Sethy Versus State of Orissa and others* disposed of on May 20, 2022 in Civil Appeal No. 4103 OF 2022 (Arising out of S.L.P.(Civil) No. 936/2022) as under:

"Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the appellant at all. He was fulfilling all the conditions for appointment on compassionate grounds under the 1990 Rules. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the appellant and all throughout there was a delay on the part of the department/authorities, the appellant should not be made to suffer. Not appointing the appellant under the 1990 Rules would be giving a premium to the

delay and/or inaction on the part of the department/authorities. There was an absolute callousness on the part of the department/authorities. The facts are conspicuous and manifest the grave delay in entertaining the application submitted by the appellant in seeking employment which is indisputably attributable to the department/authorities. In fact, the appellant has been deprived of seeking compassionate appointment, which he was otherwise entitled to under the 1990 Rules. The appellant has become a victim of the delay and/or inaction on the part of the department/authorities which may be deliberate or for reasons best known to the authorities concerned. Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of

9. Before parting with the present order, we are constrained to observe that considering the object and purpose of appointment on compassionate grounds, i.e., a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of the deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as 10 per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

We are constrained to direct as above as we have found that in several cases, applications for appointment on compassionate grounds are not attended in time and are kept pending for years together. As a result, the applicants in several cases have to approach the concerned High Courts seeking a writ of Mandamus for the consideration of their applications. Even after such a direction is issued, frivolous or vexatious reasons are given for rejecting the applications. Once again, the applicants have to challenge the order of rejection before the High Court which leads to pendency of litigation and passage of time, leaving the family of the employee who died in harness in the lurch and in financial difficulty. Further, for reasons best known to the authorities and on irrelevant considerations, applications made for compassionate appointment are rejected. After several years or are not considered at all as in the instant case.

If the object and purpose of appointment on compassionate grounds as envisaged under the relevant policies or the rules have to be achieved then it is just and necessary that such applications are considered well in time and not in a tardy way. We have come across cases where for nearly two decades the controversy regarding the 11 application made for compassionate appointment is not resolved. This consequently leads to the frustration of the very policy of granting compassionate appointment on the death of the employee while in service. We have, therefore, directed that such applications must be considered at an earliest point of time. The consideration must be fair, reasonable and based on relevant consideration. The application cannot be rejected on the basis of frivolous and for reasons extraneous to the facts of the case. Then and then only

the object and purpose of appointment on compassionate grounds can be achieved.”

6. In view of the fact and law discussed above, especially the earlier order of this Tribunal in O.A. No. 133/2008, the grounds stated in the order of rejection under Annexure-A/7 dated 14.06.2018, counter and argument advanced by the Ld Counsel for the respondents do not sound to appeal to judicial conscience so as to uphold the same. Hence, the impugned order under Annexure-A/7 dated 14.06.2018 is quashed and the matter is remitted back to the General Manager, E.Co.Railway (Respondent No.1) to remove the injustice caused to the applicant in the decision making process of the matter for providing appointment on compassionate ground and communicate the decision to the applicant in a well reasoned order within a period of 45 days from the date of receipt of a copy of this order.

7. Thus, with the observation and direction made above, the OA is disposed of. No costs.